

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

ATLANTIC CASUALTY)
INSURANCE COMPANY, INC.,)
)
a North Carolina Corporation,)
)
)
Plaintiff,)
)
v.) Cause No.
)
)
)
KESHAV KALINDI, LLC, d/b/a)
WESTWOODS MOTEL,)
)
a Missouri Limited Liability Company,)
)
and,)
)
BHARAT SAHEBA,)
)
and,)
)
DOUGLAS BOWEN,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW plaintiff, Atlantic Casualty Insurance Company, Inc., by and through undersigned counsel, and for its Complaint respectfully represents unto the court as follows:

Parties

1. Atlantic Casualty Insurance Company, hereinafter sometimes, "Atlantic Casualty," is a North Carolina Corporation that transacts insurance business in the State of Missouri;
2. Keshav Kalindi, LLC d/b/a Westwoods Motel, hereinafter sometimes, "Defendant Westwoods Motel", is a Missouri limited liability company doing business at 422 Gaylord Drive,

Fulton, Missouri 65251; at all relevant times, Bharat Saheba, was the registered agent for this company residing in St. Louis County within the Eastern District at 318 Oak Ridge Court, Ballwin, Missouri 63021;

3. Bharat Saheba, hereafter sometimes, "Defendant Saheba", was the agent, manager and employee of Defendant Westwoods Motel, as stated herein, he is a resident of St. Louis County, Missouri within the Eastern District of Missouri residing at 318 Oak Ridge Court, Ballwin, Missouri 63021;

4. Douglas Bowen, hereinafter sometimes, "Defendant Bowen" is a resident of the State of Missouri residing in this District at 8517 Leisure Lake Drive, Fulton, Missouri 65251;

Jurisdiction and Venue

5. This action for Declaratory Judgment is appropriately brought in this Court under the provisions of 28 U.S.C. § 2201;

6. This Court has jurisdiction over this matter under the provisions of 28 U.S. C. §1332 as there is complete diversity of citizenship in this action between the plaintiff and all defendants and the amount in controversy exceeds \$75,000, exclusive of interests and costs;

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that Bharat Saheba, the agent for service of process for Defendant Westwoods Motel, and is also a defendant in this case, and he is a resident of St. Louis County within the boundaries of the Eastern District of Missouri;

General Allegations

8. Atlantic Casualty issued a Commercial General Liability (CGL) policy of insurance, hereinafter "the Policy," to Defendant Westwoods Motel, bearing policy number

M202000176 with a period policy of October 13, 2011 to October 13, 2012. A certified copy of the Policy is incorporated herein by reference as Plaintiff's Exhibit 1;

9. Defendant Bowen has brought a personal injury cause of action in the Circuit Court of Callaway County, Missouri, styled *Douglas Bowen v. Keshav Kalindi, et al.*, Cause No. 12CW-CV01225, alleging he was injured while attempting to unclog a drain in his motel room. In his three count petition against Defendants, Keshav Kalindi d/b/a Westwoods Motel and Bharat Saheba, he alleges their negligence, their failure to warn, and their per se negligence resulting in serious, permanent, personal injuries to his eyes and face from an explosion of liquid Drano he was using to clean the sink in his motel room. A true and accurate copy of the Petition styled, *Douglas Bowen v. Keshav Kalindi, LLC d/b/a Westwoods Motel and Bharat Saheba*, Cause No. 12CW-CV01225, is attached hereto and incorporated herein by reference as Plaintiff's Exhibit 2;

10. Defendant Westwoods Motel has requested that Atlantic Casualty provide a defense for him and for its manager and asserts coverage under the Policy for the aforementioned claims and lawsuit and thus has a clear interest in the outcome of this litigation;

11. Defendant Bharat Saheba, who was the manager of the motel at the time of the accident and is named in the underlying suit, also has a clear interest in the outcome of this litigation.

12. Defendant Bowen also has a clear interest in the outcome of this litigation due to his claims against Defendants Westwoods Motel and Saheba as set forth in the Petition incorporated herein as Plaintiff's Exhibit 2;

13. Plaintiff Atlantic Casualty has declined coverage under its policy while offering to defend the underlying suit under a reservation of rights;

14. The plain language of the Policy unambiguously excludes coverage for the claims and injuries alleged in the underlying suit which is attached as Plaintiff's Exhibit 2;

15. The terms of the Policy excluding coverage include, but are not limited to, Endorsement AAGL-NC 1-08 of the Exclusions/Limitations – Combination Endorsement – Non-Contractors, specifically AGL-055 8/05 (page 3 of 9), which specifically excludes bodily injuries to any "employee" and defines this term as follows:

"Employee" shall include, but is not limited to, any person or persons, **hired**, loaned, leased, contracted, or **volunteering** for the purpose of providing services to or on behalf of any insured, whether paid for such services and whether or not an independent contractor".

(Emphasis ours).

16. The terms of the policy excluding coverage also include, but are not limited to, AGL-NC 1-08, specifically AGL-056 1-08 (page 4 of 9) which specifically states, "Where there is no coverage under this policy, there is no duty to defend any insured."

17. As the plain and unambiguous language of the Policy clearly excludes coverage for the injuries alleged in the underlying Petition, Atlantic Casualty is not contractually or otherwise legally obligated to provide Defendants Westwoods Motel and Saheba with any defense in the aforementioned claim and lawsuit nor is it obligated to indemnify them for any loss suffered as a result thereof.

WHEREFORE, Atlantic Casualty Insurance Company prays the Court enter its judgment declaring that there is no coverage under its Commercial General Liability Policy, Policy No. M202000176, for any liability of Defendant Keshav Kalindi LLC d/b/a/ Westwoods Motel and/or Defendant Bharat Saheba in Cause No. 12CW-CV01225 now pending in the Circuit

Court of Calloway County, State of Missouri, and that Atlantic Casualty shall be under no obligation to further defend or indemnify the Defendants and for such other and further relief as this Court deems just and proper.

Respectfully submitted,
ANDERSON & GILBERT, LC

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